In the Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1552

RURAL FOODS, INC., PETITIONER

v.

UNITED STATES DEPARTMENT OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, Rural Foods, Inc., trading as Shop and Save Super Markets, brought this action in the United States District Court for the Eastern District of Virginia to set aside an administrative determination by the Department of Agriculture disqualifying petitioner for a period of one year from participating in the food stamp program.

Pursuant to 7 U.S.C. 2022, the Department had sent petitioner a letter of charges specifying thirteen allegations of violations of the Food Stamp Act and implementing regulations (J.A. 0007-0010).[1] Petitioner replied to the charges both in writing and through counsel. The Director of the Department's Food Stamp Division determined that petitioner had violated the regulations in the

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[1]"J.A." refers to the joint appendix filed in the court of appeals.

manner specified in the letter of charges. This determination was sustained upon administrative appeal by the Food Stamp Review Officer, and petitioner accordingly was disqualified from participating in the food stamp program for a period of one year (J.A. 0001-0006).

Petitioner then filed this action. The statute under which the action was brought, 7 U.S.C. 2022(c), provides that any store or concern aggrieved by a final administrative determination may seek judicial review in a district court "to set aside such determination" and such review "shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action." Petitioner requested a jury trial. The district court, applying the test laid down in *Ross* v. *Bernhard,* 396 U.S. 531, 538, determined that the nature of the issue to be tried was "purely equitable" and hence denied petitioner's request for a jury trial (Pet. App. 61-63).

After a full hearing, the district court upheld the administrative action on the merits (Pet. App. 64-86). The court found that "[t]he evidence presented before the Court, independent of any finding by the Secretary of Agriculture, clearly establishes that [petitioner] was in violation of the provisions of the Food Stamp Act" (Pet. App. 85-86), and held that "the administrative action taken by the Secretary in disqualifying [petitioner] from participation in the Food Stamp Program for the period of one year is valid" (Pet. App. 86). The court of appeals affirmed (Pet. App. 88).

1. Petitioner contends that the district court erred in denying its request for trial by jury. The crux of petitioner's argument is that the lower courts incorrectly applied the test laid down in *Ross* v. *Bernhard, supra,* and that the "logical extension" of this Court's recent decision in *Curtis* v. *Loether,* No. 72-1035, decided February 20, 1974,

requires a jury trial under the facts of this case. But *Curtis* involved a statutory action for damages of a nature traditionally tried before a jury at common law. By contrast, the issue to be tried in this case was equitable in nature. Under 7 U.S.C. 2022, the review action in the district court is "to set aside" the final agency determination, *i.e.*, to prevent the Secretary of Agriculture from enforcing the administrative disqualification against petitioner; such an action is tantamount to an injunction. See *Luria* v. *United States*, 231 U.S. 9, 27-28. It has long been established that the Seventh Amendment does not require a jury trial in an equitable action. See, *e.g.*, *Parsons* v. *Bedford*, 3 Pet. 433, 446-447.

Furthermore, the trial *de novo* in the district court is solely to determine "the validity of the questioned administrative action" (7 U.S.C. 2022(c))[2] and the Seventh Amendment is inapplicable to the review of administrative proceedings. Cf. *Pernell* v. *Southall Realty*, No. 72-6041, decided April 24, 1974 (slip op., p. 20); *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *Block* v. *Hirsh*, 256 U.S. 135.

2. Petitioner also claims (Pet. 46-52) that several of the Department's charges were not supported by any credible evidence. But this claim with respect to the sufficiency of the evidence was resolved against petitioner by the district court which found that all "[t]he violations are established by a great preponderance of the evidence" (Pet. App. 85), and this finding was upheld by the court of appeals. This factual issue warrants no further

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[2]See *Welch* v. *United States*, 464 F. 2d 682 (C.A. 4); *Martin* v. *United States*, 459 F. 2d 300 (C.A. 6), certiorari denied, 409 U.S. 878.

review. See *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635; *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1974.

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[3]Petitioner further contends (Pet. 36-46) that the district court erred in determining that it would uphold the disqualification even if less than all of the charged violations were proven. However, as the court of appeals noted (Pet. App. 88), that determination was purely *dictum* in view of the district court's finding that all the charged violations had been committed. Moreover, an otherwise valid sanction imposed by an administrative agency must be sustained in the absence of an abuse of discretion (*Pan* v. *Glover Livestock Comm'n Co.*, 411 U.S. 182), and no such abuse was shown here.